

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

John R. Crooker

v.

Civil No. 05-cv-008-JD

Anheuser-Busch, Inc.

O R D E R

John R. Crooker moves for clarification of the court's order on the parties' previous motions for clarification. In the previous order, the court declined to address the issue of preemption in the context of a motion for clarification and directed Anheuser-Busch, Inc., ("AB") to file a properly supported motion to dismiss the remaining claims in Crooker's complaint that AB contends are preempted by ERISA. The court gave Crooker the option, depending on his view of preemption in light of AB's motion, either to file an objection to that motion to file an amended complaint to properly plead his claims. Crooker objects to those options, arguing that he should not be offered the option of filing an amended complaint until the court rules that his claims are preempted.

Crooker misunderstands. At this stage, in response to AB's motion to dismiss, Crooker may choose to object OR, if he agrees that his claims are preempted, he may file an amended complaint. If Crooker is not persuaded at this stage by AB's motion to

dismiss on preemption grounds, he will file an objection. If the court nevertheless rules the claims are preempted and dismisses the claims, within a reasonable time, he may seek leave to file an amended complaint to state claims under ERISA, if appropriate. See Fed. R. Civ. P. 15(a).

SO ORDERED.

Conclusion

For the foregoing reasons, the plaintiff's motion for clarification (document no. 26) is granted to the extent explained in this order.

  
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Joseph A. DiClerico, Jr.  
United States District Judge

October 17, 2005

cc: David A. Garfunkel, Esquire  
Andrea K. Johnstone, Esquire  
Paul B Kleinman, Esquire  
Shenanne Ruth Tucker, Esquire